The Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON; STATE OF CONNECTICUT; STATE OF MARYLAND; STATE OF NEW JERSEY; STATE OF NEW YORK; STATE OF OREGON; COMMONWEALTH OF MASSACHUSETTS; COMMONWEALTH OF PENNSYLVANIA; DISTRICT OF COLUMBIA; STATE OF CALIFORNIA; STATE OF COLORADO; STATE OF DELAWARE; STATE OF HAWAII; STATE OF ILLINOIS; STATE OF IOWA; STATE OF MINNESOTA; STATE OF NORTH CAROLINA; STATE OF RHODE ISLAND; STATE OF VERMONT and COMMONWEALTH OF VIRGINIA,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF STATE; MICHAEL R. POMPEO, in his official capacity as Secretary of State; DIRECTORATE OF DEFENSE TRADE CONTROLS; MIKE MILLER, in his official capacity as Acting Deputy Assistant Secretary of Defense Trade Controls; SARAH HEIDEMA, in her official capacity as Director of Policy, Office of Defense Trade Controls Policy; DEFENSE DISTRIBUTED; SECOND AMENDMENT FOUNDATION, INC.; AND CONN WILLIAMSON,

Defendants.

NO. 2:18-cv-01115-RSL

DECLARATION OF KRISTIN BENESKI IN SUPPORT OF PLAINTIFF STATES' OPPOSITION TO PRIVATE DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

NOTING DATE: NOVEMBER 2, 2018

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue. Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

I, Kristin Beneski, declare as follows:

1. I am over the age of 18 and have personal knowledge of all the facts stated herein.

2. I am an Assistant Attorney General with the Washington State Attorney General's Office and counsel of record for the State of Washington in this matter.

3. Attached hereto as Exhibit A is a true and correct copy of the Order entered on July 30, 2018 in the matter of *Def. Distributed v. U.S. Dep't of State*, No. 1:15-cv-00372-RP (W.D. Tex.), ECF No. 113.

4. Attached hereto as Exhibit B is a true and correct copy of "Plaintiffs' Rule 59 Motion to Alter or Amend a Judgment or, Alternatively, Rule 60(b) Motion for Relief from a Judgment" (Rule 59 motion) filed on August 27, 2018 in the matter of *Def. Distributed v. U.S. Dep't of State*, No. 1:15-cv-00372-RP (W.D. Tex.), ECF No. 117.

5. Attached hereto as Exhibit C is a true and correct copy of the "Protective Notice of Appeal" filed on September 25, 2018 in the matter of *Def. Distributed v. U.S. Dep't of State*, No. 1:15-cv-00372-RP (W.D. Tex.), ECF No. 135.

6. Attached hereto as Exhibit D is a true and correct copy of the Order issued on October 22, 2018 in the matter of *Def. Distributed v. U.S. Dep't of State*, No. 1:15-cv-00372-RP (W.D. Tex.), ECF No. 136.

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED this 29th day of October, 2018.

/s/ Kristin Beneski
KRISTIN BENESKI

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue. Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

DECLARATION OF SERVICE

I hereby certify that on October 29, 2018, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will serve a copy of this document upon all counsel of record.

DATED this 29th day of October, 2018, at Seattle, Washington.

/s/ Jeffrey Rupert
JEFFREY RUPERT

ATTORNEY GENERAL OF WASHINGTON
800 Fifth Avenue. Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DEFENSE DISTRIBUTED, et al., Plaintiffs, v. UNITED STATES DEPARTMENT OF STATE, et al., Defendants.	§ § § § § § § § § §	1:15-CV-372-RP

ORDER

Before the Court is the parties' Stipulation of Dismissal with Prejudice. (Dkt. 112). The parties stipulate that they have resolved all causes of action and that this action should be dismissed with prejudice. (*Id.*). Federal Rule of Civil Procedure 41(a)(1)(A)(ii) allows a plaintiff to dismiss an action upon filing a stipulation of dismissal signed by all parties who have appeared. Plaintiff has done so. The Court therefore **ORDERS** that the case is **DISMISSED WITH PREJUDICE**. All costs shall be taxed to the party incurring them. This action is **CLOSED**.

SIGNED on July 30, 2018.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DEFENSE DISTRIBUTED; SECOND AMENDMENT FOUNDATION, INC; and CONN WILLIAMSON, Plaintiffs, v. UNITED STATES DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; DIRECTORATE OF DEFENSE TRADE CONTROLS; MIKE MILLER, in his official capacity as Acting Deputy Assistant Secretary of Defense Trade Controls ; SARAH J. HEIDEMA, in her official capacity as Acting Director, Office of Defense Trade Controls Policy, Bureau of Political Military Affairs, Department of State, Defendants.	§ § § § § § § § § § § § § § § § § § § §	Civil Action No. 1:15-cv-372-RP

Plaintiffs' Rule 59 Motion to Alter or Amend a Judgment
or, Alternatively, Rule 60(b) Motion for Relief from a Judgment.

Plaintiffs Defense Distributed, Second Amendment Foundation, Inc., and Conn Williamson submit this Rule 59 Motion to Alter or Amend a Judgment. *See* Fed. R. Civ. P. 59. Alternatively, Plaintiffs submit this as a Rule 60 Motion for Relief from a Judgment. *See* Fed. R. Civ. P. 60(b).

Summary

All of the parties to this case thought that it had been resolved properly. On June 29, 2018, the Plaintiffs and Defendants entered into a settlement agreement, and on July 27, 2018, they filed a Rule 41(a)(1)(A) stipulation of dismissal. Dkt. 112. Three days later, this Court entered a final judgment based on that stipulation. Dkt. 113. The stipulation is the judgment's *only* basis.

Today, both the Plaintiffs and Defendants remain committed to the settlement agreement's obligations. But nineteen states and the District of Columbia are not. To the contrary, they asked the Western District of Washington to enter a nationwide injunction against the settlement agreement's implementation. Moreover, the plaintiff states fashioned that suit in such a way that Plaintiffs could not enforce their rights under the settlement agreement in that suit. That court—which lacks personal jurisdiction over the Plaintiffs—has now entered a nationwide preliminary injunction that bars the Defendants from fulfilling their end of the settlement agreement.

The injunction is more than just incorrect as a matter of law. It violates the United States Constitution's First Amendment, Second Amendment, Supremacy Clause, and Article III. And because of the controversy's public nature, the resulting injustice tramples not just the Plaintiffs' and Defendants' rights, but those of the entire citizenry.

This situation is largely unprecedented. Unforeseeable events have jeopardized the settlement agreement and the legitimacy of the stipulation that depends upon it. Neither the Plaintiffs nor the Defendants want to upend the settlement agreement. They both wish to honor it. Reopening the case will let them to do so most effectively, in ways that the current judgment does not allow for. So, in light of extraordinary circumstances and in order to prevent a manifest injustice, Plaintiffs hereby withdraw the stipulation of dismissal and request that the Court vacate its judgment and reopen the case under Rules 59 and 60.

Argument

Rule 59 gives the Court authority to "alter or amend" a judgment. Fed. R. Civ. P. 59(e). Rule 59 warrants relief here. The Court should permanently vacate the current judgment and reopen the proceedings. Alternatively, if the Court has doubts about that course of action, the Court should temporarily alter the current judgment and conduct a complete inquiry before deciding whether or not to let the original disposition become final. In addition to Rule 59, Rule 60(b)'s authority to "relieve a party . . . from a final judgment" warrants the same result.

I. To avoid manifest injustice, the order of stipulated dismissal should be vacated.

Currently, the Court's final decision orders that the action is dismissed with prejudice because of a Rule 41(a)(1)(A)(ii) stipulation. Dkt. 113. The stipulation triggering this was filed jointly by the Plaintiffs and Defendants. Dkt. 112. The stipulation was made pursuant to a settlement agreement and pursuant to Rule 41(a)(1)(A)(ii), *id.*, which provides:

> a) Voluntary Dismissal.
>
> (1) *By the Plaintiff.*
>
> (A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:
>
> . . .
>
> (ii) a stipulation of dismissal signed by all parties who have appeared.

Fed. R. Civ. P. 41(a)(1)(A)(ii).

After Plaintiffs filed the stipulation, this Court entered an order dismissing the action with prejudice, allocating costs, and closing the case. Dkt. 113. That order constituted the final judgment. *See Harvey Specialty & Supply, Inc. v. Anson Flowline Equip. Inc.*, 434 F.3d 320, 324-35 (5th Cir. 2005). However, it was the stipulation and not the order that constituted the dismissal. *See, e.g.*, *SmallBizPros, Inc. v. MacDonald*, 618 F.3d 458, 461-63 (5th Cir. 2010).

The stipulation's force is what makes the final judgment correct. If the stipulation deserves to be withdrawn, the resulting dismissal of the Plaintiffs' case should also be no more; and if the Plaintiffs' case is no longer dismissed, the judgment should be vacated to reopen the action. *See, e.g.*, *Littman v. Bache & Co.*, 246 F.2d 490, 492 (2d Cir. 1957) (Hand, J.) ("order 'vacating' the plaintiff's 'notice of dismissal,' . . . reopens the case for consideration upon the merits").

A. Plaintiffs withdraw their stipulation of dismissal.

Stipulations are not set in stone. They can be withdrawn at a party's behest in extraordinary circumstances, such as "manifest injustice":

> The trial court has not only the right, but the duty to relieve counsel from pretrial stipulations where necessary to *avoid manifest injustice* and adjudications based on the sporting theory.

United States v. Texas, 680 F.2d 356, 370 (5th Cir. 1982) (citation omitted) (emphasis added). Under this well-established rule, the "court always has the responsibility to cut a litigant from the snares and tangles of a procedural trap, whether it be created by his own or another's doings in order to prevent manifest injustice." *Assoc. Beverages Co. v. P. Ballantine & Sons*, 287 F.2d 261, 263 (5th Cir. 1961).[1]

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[1] *Accord Rice v. Glad Hands, Inc.*, 750 F.2d 434, 438 (5th Cir. 1985) ("Care must be taken to assure, considering the peculiar circumstances of a given case, that a rigid enforcement of the stipulation does not lead to an injustice."); *Equitable Life Assur. Soc. of U.S. v. MacGill*, 551 F.2d 978, 984 (5th Cir. 1977) ("a party may be relieved of a stipulation 'to prevent manifest injustice' so long as 'suitable protective terms or conditions are imposed to prevent substantial and real harm to the adversary"); *Cent. Distributors, Inc. v. M. E. T., Inc.*, 403 F.2d 943, 946 (5th Cir. 1968) ("A stipulation of counsel originally designed to expedite a trial should not be rigidly adhered to when it becomes apparent that it may inflict manifest injustice upon one of the subscribers thereto."); *Logan Lumber Co. v. C.I.R.*, 365 F.2d 846, 855 (5th Cir. 1966) ("a party may be relieved of a stipulation 'to prevent manifest injustice' so long as 'suitable protective terms or conditions are imposed to prevent substantial and real harm to the adversary'"); *see also Carnegie Steel Co. v. Cambria Iron Co.*, 185 U.S. 403, 444 (1902) ("[U]pon giving notice in sufficient time to prevent prejudice to the opposite party, counsel may repudiate any fact inadvertently incorporated therein.

Under this doctrine, trial courts are not just *allowed* to accept appropriate withdrawals of stipulations. It is their duty to do so. Precedents like *Laird v. Air Carrier Engine Services, Inc.*, 263 F.2d 948 (5th Cir. 1959), explain that each court "does have the right, and it *should never fail to exercise it*, to relieve counsel of stipulations to prevent manifest injustice." *Id.* at 953 (emphasis added).[2] Here, the Court should approve Plaintiffs' withdrawal of the stipulation of dismissal.

B. Unforeseeable Ninth Circuit litigation produced an injunction that jeopardizes the settlement agreement to the detriment of both Plaintiffs and Defendants.

This litigation entailed a serious dispute between the Plaintiffs and the Defendants—mainly the State Department—about the applicability of "certain laws governing the export of unclassified technical data relating to prohibited munitions." *Def. Distributed v. U.S. Dep't of State*, 838 F.3d 451, 460 (5th Cir. 2016). But now that dispute no longer exists. The Plaintiffs and Defendants are in complete agreement about the right way to resolve that matter.

This practice has been frequently upheld in this and other courts"); *Waldorf v. Shuta*, 142 F.3d 601, 617–18 (3d Cir. 1998) (on factors defining exceptional circumstances).

[2] Precedent rightly recognizes that Rule 41 does *not* abrogate the inherent authority "necessarily vested in courts to manage their own affairs." *Link v. Wabash R. Co.*, 370 U.S. 626, 630 (1962); *accord Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 379 (1994); *see also United States v. Colomb*, 419 F.3d 292, 299 (5th Cir. 2005) ("A district court has inherent power 'to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.'" (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). *Cf. Dietz v. Bouldin*, 136 S. Ct. 1885, 1892 (2016) ("a federal district court can rescind a discharge order and recall a jury in a civil case as an exercise of its inherent powers"). Hence, courts entertain post-judgment requests to withdraw stipulations of dismissal regularly, in both the Rule 59 and Rule 60 contexts. *See, e.g.*, *Kabbaj v. Am. Sch. of Tangier*, 445 F. App'x 541, 543 (3d Cir. 2011); *Yeldon v. Crouch*, No. No. 9:12-CV-1564, 2016 WL 4126384, at *1 (N.D.N.Y. Apr. 4, 2016), *report and recommendation adopted sub nom. Yeldon v. Caulkin*, No. 9:12-CV-1564 (N.D.N.Y. Aug. 2, 2016); *Kinney v. United States Gov't USDA Forest Serv.*, No. 1:12-CV-01008, 2014 WL 12788960, at *2 (D.N.M. Aug. 14, 2014); *Domestic Fabrics Corp. v. Sears, Roebuck & Co.*, 325 F. Supp. 2d 612, 613 (E.D.N.C. 2003).

The Plaintiffs and Defendants settled their dispute by entering into the Settlement Agreement of June 29, 2018. Ex. A; Dkt. 97-1. As the State Department's own court filings correctly acknowledged, "[p]ursuant to the settlement and as relevant here, the Government agreed to the following":

> (a) Defendants' commitment to draft and to fully pursue, to the extent authorized by law (including the Administrative Procedure Act), the publication in the Federal Register of a notice of proposed rulemaking and final rule, revising USML Category I to exclude the technical data that is the subject of the Action.
>
> (b) Defendants' announcement, while the above-referenced final rule is in development, of a temporary modification, consistent with the . . . (ITAR), 22 C.F.R. § 126.2, of USML Category I to exclude the technical data that is the subject of the Action. The announcement will appear on the DDTC website, www.pmddtc.state.gov, on or before July 27, 2018.
>
> (c) Defendants' issuance of a letter to Plaintiffs on or before July 27, 2018, signed by the Deputy Assistant Secretary for Defense Trade Controls, advising that the Published Files, Ghost Gunner Files, and CAD Files are approved for public release (i.e., unlimited distribution) in any form and are exempt from the export licensing requirements of the ITAR because they satisfy the criteria of 22 C.F.R. § 125.4(b)(13). . . .
>
> (d) Defendants' acknowledgment and agreement that the temporary modification . . . permits any United States person, to include DD's customers and SAF's members, to access, discuss, use, reproduce, or otherwise benefit from the technical data that is the subject of the Action, and that the letter to Plaintiffs permits any such person to access, discuss, use, reproduce or otherwise benefit from the Published Files, Ghost Gunner Files, and CAD Files.

Ex. B at 5-6 (W.D. Wash. Dkt. 64) (footnotes omitted).

After the stipulation, the Defendants complied with the settlement agreement in part, at least for a short period. *See id.* at 6. The rulemaking began, the temporary modification was issued, the license was issued, and the acknowledgement occurred. *See id.*

Meanwhile, opposing organizations attempted to intervene. They asked this Court to enjoin the State Department from continuing to carry out the settlement agreement. Dkts. 96, 97, 98, 103, 109. The Court found that those organizations lacked standing, and denied the motion to

intervene. Dkt. 111 at 5-7 ("Because the Movants cannot establish an injury in fact, they lack Article III standing to intervene in this action.").

The stipulation of dismissal with prejudice was signed by both sides and was filed on the evening of Friday, July 27, 2018. Dkt. 112 at 1. On Monday, July 30, this Court entered a final judgment that acknowledged the stipulated dismissal, taxed costs to the party incurring them, and ordered that the "case is DISMISSED WITH PREJUDICE." Dkt. 113 at 1. Then the matter took a turn for the unexpected.

In the evening of Monday, July 30, 2018, Washington and other states filed suit against this action's Defendants and Plaintiffs in the Western District of Washington. Ex. C (W.D. Wash. Dkt. 1). The state plaintiffs' complaint alleged that, by entering into the settlement agreement and carrying out its obligations, the State Department had "violated the Administrative Procedure Act (APA) and the Tenth Amendment of the U.S. Constitution." *Id.* at 7. The suit—which would ultimately include nineteen states and the District of Columbia—sought a nationwide injunction to bar the State Department from performing its obligations under the settlement agreement. *Id.*

The Plaintiffs here opposed the States' injunction request and defended the settlement agreement's obligations as perfectly lawful. Ex. D, E, F (W.D. Wash. Dkts. 8, 11, 14). Critically, the State Department defended the settlement agreement as well. Ex. G (W.D. Wash. Dkt. 16).

The State Department pointed out the States' extraordinary request—"[t]hey ask the Court to suspend and enjoin enforcement of actions already taken by the Government pursuant to its obligations under the Settlement Agreement"—and argued that the States lacked standing, were wrong on the merits, and had failed to demonstrate an injunction's other prerequisites such as irreparable harm. *Id.* at 8-18.

Nevertheless, on July 31, 2018, the Western District of Washington issued a nationwide temporary restraining order. In no uncertain terms, the restraining order enjoined the State Department from fulfilling its obligations under the settlement agreement:

> For all the foregoing reasons, plaintiffs' motion for temporary restraining order is GRANTED. The federal government defendants and all their respective officers, agents, and employees are hereby enjoined from implementing or enforcing the "Temporary Modification of Category I of the United States Munitions List" and the letter to Cody R. Wilson, Defense Distributed, and Second Amendment Foundation issued by the U.S. Department of State on July 27, 2018, and shall preserve the status quo *ex ante* as of the modification had not occurred and the letter had not been issued.

Ex. H (W.D. Wash. Dkt. 23). The States amended their complaint, Ex. I (W.D. Wash. Dkt. 29), and moved for a preliminary injunction based on essentially the same argument as before, Ex. J (W.D. Wash. Dkt. 43); *see* Exs. K, L, M, N (W.D. Wash. Dkts. 63, 64, 68, 69) (briefs). Once again, the Plaintiffs and Defendants here agreed. But once again, our arguments were unsuccessful.

Today, the Western District of Washington issued a preliminary injunction. Ex. P (W.D. Wash. Dkt. 95). Just like the TRO, it enjoins the State Department from fulfilling its settlement agreement obligations. Three facets of the decision warrant special emphasis.

First, the decision warps Article III and the Supremacy Clause by granting the states standing to sue for a takeover of the federal government. But states have no right to make federal law. Only Congress and the President do. And yet this decision holds that the states' interest in such commandeering is a right that Article III exists to adjudicate. Politicians rightly care about their constituents' health and well-being. But those concerns are political, not legal. "*Parens patriae*" is what the law calls this—the "quasi-sovereign interest in the health and well-being" of residents—and a "State does not have standing as *parens patriae* to bring an action against the Federal Government." *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 610 n.1 (1982). The Western District of Washington should not have decided this case at all.

Second, the decision renders an extreme holding on the merits: The First Amendment can be "abridged" so long as it is not "abrogated." Op. at 25. This holding is truly extraordinary, not just for the obvious reason—"Congress shall make no law . . . *abridging* the freedom of speech," U.S. Const. amend. I (emphasis added)—but also because of a key principle that the opinion had to acknowledge. *Without breaking any law*, the computer files at issue here "can be emailed, mailed, securely transmitted, or otherwise published within the United States." Op. at 25.

The court had to embrace this proposition because both the States and State Department conceded it, and rightly so. The State Department correctly takes the position that "even if the Court [in Washington] were to grant plaintiffs every ounce of relief that they seek in this case, *Defense Distributed could still mail every American citizen in the country the files that are at issue here*." Ex. O at 27 (emphasis added). Likewise, the state plaintiffs conceded that Defense Distributed could "hand the[files] around domestically" and break no law. Ex. O at 23.

In this way, the issue was essentially reduced to the question of whether states are entitled to wall off disfavored parts of the internet because of what people there talk about. That ought to trigger the most serious First Amendment analysis. But instead of doing any, the preliminary injunction decision said that it need not "wade through" First Amendment issues because the First Amendment is merely being "abridged" and not "abrogated":

> The Court declines to wade through these issues based on the limited record before it and instead presumes that the private defendants have a First Amendment right to disseminate the CAD files. *That right is currently abridged, but it has not been abrogated*. Regulation under the AECA means that the files cannot be uploaded to the internet, but they can be emailed, mailed, securely transmitted, or otherwise published within the United States. The Court finds that the irreparable burdens on the private defendants' *First Amendment rights are dwarfed* by the irreparable harms the States are likely to suffer if the existing restrictions are withdrawn and that, overall, the public interest strongly supports maintaining the status quo through the pendency of this litigation.

Id. at 25 (emphasis added).

Most importantly for present purposes, the Western District of Washington's decision addresses its relationship to this action. It does not do so indirectly. It does so directly. It says that, even if the preliminary injunction "impinges on the federal defendants' ability to perform under their settlement agreement," the Ninth Circuit litigation will *not* adjudicate the legal relationship of this case's Plaintiffs and Defendants. Op. at 12. "The dismissal of the Texas litigation is not under attack," the preliminary injunction says, because the States in the Washington case are merely "challenging the adequacy of agency action":

> If, as plaintiffs allege, the federal defendants exceeded their authority in entering into the settlement agreement with the private defendants, they are entitled to file suit under the APA and seek appropriate redress. *If the remedy afforded in this litigation impinges on the federal defendants' ability to perform under their settlement agreement with the private defendants, the latter may have a breach of contract claim against the former*, but there is no jurisdictional bar to this litigation in the circumstances presented here. The dismissal of the Texas litigation is not under attack: rather, the States are .

Id. at 12 (emphasis added).

At bottom, the decision enjoins the Defendants with an injunction of the same scope as the temporary restraining order. It enjoins the State Department from "implementing or enforcing" the settlement agreement's two key components—the temporary modification and the licensing letter:

> For all of the foregoing reasons, plaintiffs' motion for a preliminary injunction is GRANTED. The federal defendants and all of their respective officers, agents, and employees are hereby enjoined from implementing or enforcing the "Temporary Modification of Category I of the United States Munitions List" and the letter to Cody R. Wilson, Defense Distributed, and the Second Amendment Foundation issued by the U.S. Department of State on July 27, 2018, and shall preserve the status quo ex ante as if the modification had not occurred and the letter had not been issued until further order of the Court.

Id. The decision takes effect immediately.

C. Exceptional circumstances warrant withdrawal of the Plaintiffs' stipulation.

When the Plaintiffs and Defendants here entered the stipulation of dismissal, it was inconceivable that another federal court would allow states to mount a collateral attack on this Court's judgment. This is not a run-of-the-mill case where one side has reneged on a settlement agreement. Rather, this is the extraordinary case where a settlement agreement that is completely supported by both parties—one of whom is the United States of America—has been rendered a legal nullity by third parties that lack any justiciable stake in the matter whatsoever. This situation is unprecedented.

In the more ordinary situation—one party breaching a settlement agreement and the other insisting on its enforcement—courts may deny the latter's request to withdraw a stipulation of dismissal. But the reasons for doing that do not apply here. In such a case, the two sides disagree about whether to carry out the settlement agreement; and in such a case, the aggrieved party can sue the opponent for breach of the settlement agreement. Not so here. In this case, both sides *agree* about the need to fulfill the settlement agreement; and in this case, a breach-of-contract suit would not necessarily supply such relief. Why? The federal court in Washington has enjoined the State Department from performing the settlement agreement no matter what.

This issue arose during oral arguments before the Western District of Washington. Both the District Court and counsel for the states made clear that the Ninth Circuit litigation will never address the issue of the settlement agreement's enforcement:

> [States' Counsel]: We are attacking the government's decision to allow these 3D guns to be readily available, and the administrative process there. We're not attacking the settlement agreement itself.
>
> THE COURT: There may be contractual issues between Defense Distributed and the federal government, based on the settlement agreement. ***But it's not in front of me and it's not part of this lawsuit is what you're saying?***

> [States' Counsel]: ***That's correct, Your Honor.***
>
> THE COURT: ***I agree with that.*** But I'm glad to have [Defense Distributed's Counsel] and his client here to express a point of view that obviously the federal government isn't willing to go that far. So it's very useful to have him here. But I agree with you, ***I'm not touching any contract issue in the case.***

Ex. O at 46-47 (W.D. Wash. Preliminary Injunction Hearing Transcript) (emphasis added).

Hence, today's preliminary injunction decision does not hide from these implications. To its credit, the decision speaks of them candidly. Even though the injunction "impinges on the federal defendants' ability to perform under their settlement agreement," the Western District of Washington will decidedly *not* adjudicate anything about the State Department's fulfillment of obligations under the settlement agreement. Ex. P at 12. Given that the Western District of Washington believes that the "Texas litigation is *not* under attack," *id.* (emphasis added), it will never come to the defense of the instant judgment's integrity.

The Plaintiffs have exhausted every possible avenue of relief in the court that is causing the legal jeopardy. And so it is that the Plaintiffs respectfully return to this Court now, to withdraw the stipulation of dismissal and have the current judgment vacated. Withdrawals of stipulations are allowed when necessary to avoid "manifest injustice." This is the rare case in point.

Importantly, the "manifest injustice" showing does *not* require proof that the States and/or the State Department have been acting with malice or any other bad motive. Rather, the decision to "reopen a case" because of a stipulation gone awry can be justified because the parties proceeded under an "honest mistake." *Russell-Miller Mill. Co. v. Todd*, 198 F.2d 166, 169 (5th Cir. 1952). The Plaintiffs and Defendants simply assumed that a settlement would resolve the dispute without the need for a judgment codifying its obligations. The stipulation was premised on that honest and reasonable assumption. Under the Fifth Circuit's precedents, relief is warranted.

Moreover, the Plaintiffs' right to withdraw this stipulation is supported by the dispositive nature of the dismissal. Unlike minor evidentiary stipulations that merely *shape* a merits determination, dispositive stipulations such as dismissal preclude a merits determination altogether. Cases like *Central Distributors, Inc. v. M. E. T., Inc.*, 403 F.2d 943 (5th Cir. 1968), make this distinction important: withdrawal is required where, as here, denying withdrawal would "effectively bar[] a meaningful examination of the only real issues present." *Id.* at 946.

Furthermore, the Plaintiffs' right to withdraw their stipulation is supported by the Defendants' identity. Whatever may be said about trust amongst opposing private parties, all Americans are entitled to trust that the United States of America itself will deliver on the promises it makes in litigation. *See, e.g.*, *United States v. Camp*, 723 F.2d 741, 745–46 (9th Cir. 1984) ("Appellants had every reason to rely on the factual representation made in this regard by the federal prosecutor.").

Additionally, no prejudice will result from withdrawing this stipulation. As a general matter, prejudice may result when the opposing party is denied an opportunity to present its defense's merits. *See e.g.*, *Stavroudis v. United States*, 309 F.2d 480, 481 (2d Cir. 1962). Here, no such disability exists.

Indeed, the equitable balance tips strongly in the Plaintiffs' favor, for "it is inequitable for a party to withdraw his burdens under a contract or stipulation without forfeiting the benefits derived under that agreement." *Stephens Inst. v. N.L.R.B.*, 620 F.2d 720, 725 (9th Cir. 1980). The Defendants were temporarily freed from the settlement's burdens, albeit involuntarily. They cannot now complain about being temporarily detached from its benefits until a new, more appropriate judgment is produced.

Finally, the Plaintiffs' right to withdraw this stipulation is supported by the substantial public importance of this case's constitutional questions. In such cases, district courts have even wider latitude to permit the right to withdraw the stipulation. *See United States v. State of Tex.*, 680 F.2d 356, 370 (5th Cir. 1982).

At bottom, this case presents extraordinary circumstances. Unless the stipulation can be withdrawn, the Plaintiffs will suffer a manifest injustice. "The Rules of Civil Procedure were adopted in an effort to put an end to the sporting theory of justice." *Cent. Distributors, Inc. v. M. E. T., Inc.*, 403 F.2d 943, 946 (5th Cir. 1968). If the stipulation cannot be withdrawn, the result in this case would have "precisely the opposite effect: the sporting theory of justice is resurrected and revitalized." *Id.*

II. The Dismissal Should Also be Vacated under Rule 60(b).

To the extent that Rule 59 does not supply sufficient authority to grant the Plaintiffs' requested relief, Plaintiffs request that the Court do so pursuant to Federal Rule of Civil Procedure 60(b). A dismissal under Rule 41(a)(1)(A) qualifies as a "proceeding" for purposes of Rule 60(b) "proceeding." This Court's judgment is therefore subject to vacatur under Rule 60(b). *See Nat'l City Golf Fin. v. Scott*, No. 17-60283, 2018 WL 3767318 (5th Cir. Aug. 9, 2018).

In substance, the standard for relief under Rule 60(b) is essentially the same as the standard for relief under Rule 59: the Plaintiffs must show that permitting the judgment to stand would result in "manifest injustice" *Yesh Music v. Lakewood Church*, 727 F.3d 356, 363 (5th Cir. 2013). With the situation presented here, the two inquiries dovetail harmoniously as one in the same. *See Celtic Marine Corp. v. James C. Justice Companies, Inc.*, No. 11-3005, 2013 WL 2390018, at *1 (E.D. La. May 30, 2013).

For the same reasons that relief here is warranted under Rule 59, *supra* Part II.C, relief here is warranted under Rule 60(b). Precedent supporting that conclusion comes both from this Circuit, *see Yesh Music*, 727 F.3d at 361-64; *Stipelcovich v. Sand Dollar Marine, Inc.*, 805 F.2d 599, 605 (5th Cir. 1986) ("When the settlement agreement was breached Stipelcovich had two remedies available. She could have brought an action to collect the $150,000 due under the settlement, or she could have made a rule 60(b)(6) motion to vacate the prior dismissal and reinstate the case."), and others, *Keeling v. Sheet Metal Workers Int'l Assn.*, 937 F.2d 408, 410 (9th Cir. 1991) ("Repudiation of a settlement agreement that terminated litigation pending before a court constitutes an extraordinary circumstance, and it justifies vacating the court's prior dismissal order."); *Fairfax Countywide Citizens Ass'n v. Fairfax County, Va.*, 571 F.2d 1299, 1302–03 (4th Cir. 1978) ("[U]pon repudiation of a settlement agreement which had terminated litigation pending before it, a district court has the authority under Rule 60(b)(6) to vacate its prior dismissal order and restore the case to its docket").

III. Further Proceedings Should Occur Soon, with Flexibility.

After vacating the current judgment, the Court will retain wide latitude to craft future proceedings in a way that is fair to all sides. *See Central Distributors*, 403 F.2d at 945 ("the court is responsible for seeing that suitable protective terms are imposed to prevent substantial and real harm to the adverse party"). Specifically, the Court will have at least two paths available to it.

First, the Court can permanently vacate the current judgment. This is the most appropriate outcome because there is no need, for example, to wait and see how the Western District of Washington's injunction pans out on appeal to the Ninth Circuit. The current state of affairs is enough to warrant both permanently vacating the existing judgment and immediately preceding to a new resolution.

Second, if the Court has doubts about that course of action, it should at least *temporarily* vacate the current judgment. This approach would allow the Court to conduct a complete inquiry into the circumstances before deciding whether or not to let the original disposition become final. At that point, the Court would have the authority to either re-enter a judgment of dismissal (if it is justified) or adhere to this vacatur decision and proceed to a merits resolution.

In either case, the critical first step is to vacate the current judgment because the Plaintiffs no longer stipulate to it. The Plaintiffs and Defendants have bound themselves to a settlement agreement. But this matter is nonetheless far from settled. The dismissal order entered on July 30, 2018 should not be this Court's final judgment. The case should be reopened.

Conclusion

The motion should be granted and the Court should vacate the July 30, 2018 Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served to all counsel of record through the Court's CM/ECF system on this 27th day of August, 2018.

/s/ Mary Kate Raffetto
Mary Kate Raffetto

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DEFENSE DISTRIBUTED; SECOND AMENDMENT FOUNDATION, INC; and CONN WILLIAMSON, Plaintiffs, v. UNITED STATES DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; DIRECTORATE OF DEFENSE TRADE CONTROLS; MIKE MILLER, in his official capacity as Acting Deputy Assistant Secretary of Defense Trade Controls ; SARAH J. HEIDEMA, in her official capacity as Acting Director, Office of Defense Trade Controls Policy, Bureau of Political Military Affairs, Department of State, Defendants.	§ § § § § § § § § § § § § § § § § § § §	Civil Action No. 1:15-CV-00372-RP

Protective Notice of Appeal

Plaintiffs Defense Distributed, Second Amendment Foundation, Inc., and Conn Williamson appeal to the United States Court of Appeals for the Fifth Circuit from the final judgment comprised of document number 112, the July 27, 2018 "Stipulation of Dismissal with Prejudice," and document number 113, the July 30, 2018 "Order."

Plaintiffs file this notice of appeal protectively because the parties disagree about a procedural matter that impacts appellate deadlines. Specifically, a protective notice is called for by a dispute about the timeliness of Plaintiffs' post-judgment motion for relief under Federal Rule of Civil Procedure 59 and Federal Rule of Civil Procedure 60. Dkt. 117.

Plaintiffs submit that their motion for post-judgment relief was timely. *See* Dkt. 132 at 2-3. If so, "the time to file an appeal runs for all parties from the entry of the order disposing of the . . . motion," Fed. R. App. P. 4(a)(4)(A), which has not occurred yet. Defendants submit that the motion was untimely. *See* Dkt. 125 at 3-4. If so, the notice of appeal would be due "within 60 days after entry of the judgment or order appealed from." Fed. R. App. P. 4(a)(1)(B).

Hence, if Plaintiffs' are correct about timeliness, a notice of appeal need not be filed at this time. But out of an abundance of caution, Plaintiffs file this notice protectively to guarantee appellate jurisdiction. This notice does *not* disrupt the need for a decision on Plaintiffs' motion for relief under Rules 59 and 60. The Court should proceed to decide that in due course.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served to all counsel of record through the Court's CM/ECF system on this 25th day of September, 2018.

/s/ Chad Flores
Chad Flores

Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DEFENSE DISTRIBUTED, et al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	1:15-CV-372-RP
	§	
U.S. DEPARTMENT OF STATE, et al.,	§	
	§	
Defendants.	§	

ORDER

Before the Court is Plaintiffs' Motion to Amend Judgment, (Mot., Dkt. 117), Defendants' Response in Opposition to Motion, (Resp., Dkt. 125), and Plaintiffs' Reply to Response to Motion, (Dkt. 132). Plaintiffs request that the Court vacate its order dismissing this case with prejudice. (Dkt. 113). Having considered the parties' submissions and applicable law, the Court denies Plaintiffs' motion.

I. BACKGROUND

Plaintiffs and Defendants entered into a Settlement Agreement on June 29, 2018. (Mot., Dkt. 117, at 6; Resp., Dkt. 125, at 1). Pursuant to this settlement agreement, the parties filed with the Court a stipulation of dismissal of this action with prejudice on July 27, 2018. (Stip., Dkt. 112). On July 30, 2018, the Court entered an order dismissing this action with prejudice. (Dkt. 113). That same day, several States and the District of Columbia filed suit in the United States District Court for the Western District of Washington, alleging that the State Department had "violated the Administrative Procedure Act (APA) and the Tenth Amendment of the U.S. Constitution." (Mot., Dkt. 117, at 7). The Western District of Washington entered a temporary restraining order, and subsequently a preliminary injunction, enjoining the Government from implementing certain provisions of the parties' settlement agreement. While the injunction remains in effect, the parties

may not perform some of the obligations set forth in their settlement agreement. It is on this basis that Plaintiffs request that the Court vacate its order of dismissal. (Mot., Dkt. 117, at 4).

II. DISCUSSION

Plaintiffs request relief under Federal Rules of Civil Procedure 59(e) and 60(b). Specifically, Plaintiffs argue that the Court should vacate the current judgment of dismissal because allowing the judgment to stand would result in "manifest injustice." (*Id.* at 3, 14).

Rule 59(e) permits a court to alter or amend a judgment "to prevent a manifest injustice." *Schiller v. Physicians Res. Grp., Inc.*, 342 F.3d 563, 567 (5th Cir. 2003). "Reconsideration of a judgment after its entry is an extraordinary remedy that should be used sparingly." *Templet v. HydroChem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004). Similarly, Rule 60(b)(6) permits a court to relieve a party from a final judgment to avoid manifest injustice in "extraordinary circumstances." *Nat'l City Golf Fin. v. Scott*, 2018 WL 3767318, at *6 (5th Cir. Aug. 9, 2018); *Yesh Music v. Lakewood Church*, 727 F.3d 356, 363 (5th Cir. 2013).

The crux of Plaintiffs' argument is that the Western District of Washington's preliminary injunction is an "extraordinary and unforeseeable" occurrence "resulting [in] injustice" because it has "jeopardized the settlement agreement." (Mot., Dkt. 117, at 2). As explained below, Plaintiffs have not demonstrated that they are entitled to the relief they seek.

A. Plaintiffs' Motion is Timely

Before addressing the merits of Plaintiffs' motion, the Court considers whether Plaintiffs' motion is timely. Defendants assert that the motion is untimely and should therefore be denied. (Resp., Dkt. 125, at 3). Under Rule 59(e), "[a] motion to alter or amend a judgment must be filed no later than 28 days after entry of the judgment." Fed. R. Civ. P. 59(e). The parties filed their stipulation of dismissal on July 27, 2018. (Stip., Dkt. 112). The Court entered an order dismissing this case on July 30, 2018. (Dkt. 113). Plaintiffs filed the instant motion on August 27, 2018, (Mot.,

Dkt. 117)—twenty-eight (28) days after the Court's order dismissing this case but thirty-one (31) days after the parties filed their stipulation of dismissal. Defendants assert that Rule 59(e)'s 28-day window opened the day the parties filed the stipulation of dismissal, (Resp., Dkt. 125, at 4); Plaintiffs assert that the window opened when the Court entered the order dismissing the case, (Reply, Dkt. 132, at 4). Plaintiffs have the better argument.

Rule 59(e) provides that "[a] motion to alter or amend a *judgment* must be filed no later than 28 days after *the entry of the judgment*." Fed. R. Civ. P. 59(e) (emphasis added). A "judgment" under the Federal Rules "includes a decree and any order from which an appeal lies." Fed. R. Civ. P. 54(a). A stipulated dismissal is not a "judgment" of the court. "Stipulated dismissals under Rule 41(a)(1)(A)(ii) . . . require no judicial action or approval and are effective immediately upon filing." *Yesh Music,* 727 F.3d at 362. Thus, "any action by the district court after the filing of such a stipulation can have no force or effect because the matter has already been dismissed by the parties themselves without *any* court action." *SmallBizPros, Inc. v. MacDonald*, 618 F.3d 458, 463 (5th Cir. 2010) (emphasis added). In other words, the parties' stipulated dismissal involved no action by this Court—and consequently no decree, order, or judgment of any kind. Parties may file stipulations, but it is the Court that enters a judgment. Before the Court entered its order dismissing the case, there was not yet a judgment to alter or amend.

Accordingly, it is the Court's order dismissing this case, not the parties' stipulation of dismissal, that triggers Rule 59(e)'s 28-day window for a motion to alter or amend a judgment of the Court. Plaintiffs' motion was therefore timely filed.

B. The Circumstances of this Case Do Not Warrant Vacating Dismissal

Turning to the merits, Plaintiffs' arguments rely on the assertion that the injunction entered by the Western District of Washington was unforeseeable. (Mot., Dkt. 117, at 7; Reply, Dkt. 132, at 2). More specifically, it is the *effect* of the injunction that was unforeseeable—namely, that the parties'

settlement agreement "has been rendered a legal nullity." (Mot., Dkt. 117, at 11). Defendants counter, and Plaintiffs do not dispute, that "Plaintiffs entered into a settlement agreement, negotiated at arm's length, with the understanding that the agreement required Defendants to undertake actions potentially subject to review under the Administrative Procedure Act, as expressly recognized" in the terms of the settlement agreement. (Resp., Dkt. 125, at 5). On these facts, the Court finds that an injunction on the performance of the terms of the settlement agreement was reasonably foreseeable.

The Court's power to grant a party relief from judgment "is not for the purpose of relieving a party from free, calculated, and deliberate choices he has made." *Edward H. Bohlin Co.*, 6 F.3d 350, 357 (5th Cir. 1993). The express terms of the settlement agreement reflect that the parties anticipated potential review of the terms of the agreement under the Administrative Procedure Act (APA). It is reasonably foreseeable that a court reviewing government action for compliance with the APA might enjoin performance of the challenged action during the pendency of litigation. This is common practice.[1]

Plaintiffs' arguments to the contrary do not pertain to whether it was foreseeable that the terms of the settlement agreement would be rendered temporarily unenforceable. Plaintiffs argue

[1] *See, e.g.*, *L.V.M. v. Lloyd*, 318 F. Supp. 3d 601, 621 (S.D.N.Y. 2018) (entering preliminary injunction ordering federal government defendants to vacate the Office of Refugee Resettlement director review policy until further order of the court); *Medina v. U.S. Dep't of Homeland Security*, 313 F. Supp. 3d 1237, 1252 (W.D. Wash. 2018) (granting preliminary injunction enjoining federal government from terminating plaintiff's Deferred Action for Childhood Arrivals (DACA) status); *California v. Health & Human Servs.*, 281 F. Supp. 3d 806, 813–14 (N.D. Cal. 2017) (granting nationwide preliminary injunction on implementing contraceptive coverage exemptions); *Pennsylvania v. Trump*, 281 F. Supp. 3d 553, 585 (E.D. Pa. 2017) (same); *Franciscan Alliance, Inc. v. Burwell*, 227 F. Supp. 3d 660, 696 (N.D. Tex. 2016) (enjoining enforcement of regulation prohibiting discrimination on the basis of gender identity and termination of pregnancy as violating the APA); *Texas v. U.S.*, 201 F. Supp. 3d 810, 836 (N.D. Tex. 2016) (granting nationwide preliminary injunction to coalition of states enjoining federal government from enforcing guidelines that students should be able to use bathrooms aligned with their gender identity rather than biological sex); *Texas v. U.S.*, 86 F. Supp. 3d 591, 677 (S.D. Tex. 2015) (granting nationwide preliminary injunction enjoining implementation of the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program and expansion of DACA program); *Hornbeck Offshore Servs., LLC v. Salazar*, 696 F. Supp. 2d 627, 639 (E.D. La. 2010) (enjoining federal government from enforcing deepwater oil drilling moratorium); *Lazaro v. U.S. Dep't of Agriculture*, 186 F. Supp. 2d 1203, 1219 (M.D. Fla. 2001) (enjoining federal government from disqualifying store from participation in Food Stamp Program); *Seaboard World Airlines, Inc. v. Gronouski*, 230 F. Supp. 44, 47 (D.D.C. 1964) (enjoining Postmaster General from enforcing new overseas air mail transportation policy until further order of the court).

that the injunction (1) "warps Article III and the Supremacy Clause by granting states standing to sue for a takeover of the federal government"; and (2) the injunction "renders an extreme holding on the merits." (Mot., Dkt. 117, 8–9).[2] These arguments do not address the foreseeability of non-enforcement. At best, Plaintiffs seem to suggest that particular aspects of the Washington injunction—its nationwide character and the fact that it was sought by several States—were unforeseeable, not that *the fact of* enjoinment was unforeseeable. As noted, Plaintiffs expressly contemplated APA review of the settlement agreement. (Resp., Dkt. 125, at 5). And in any event, prior to Plaintiffs entering into the settlement agreement, individual States or coalitions of States had already secured several nationwide injunctions. *See, e.g.*, *California v. Health & Human Servs.*, 281 F. Supp. 3d 806, 813–14 (N.D. Cal. 2017) (granting nationwide preliminary injunction on implementing contraceptive coverage exemptions); *Franciscan Alliance, Inc. v. Burwell*, 227 F. Supp. 3d 660, 696 (N.D. Tex. 2016) (granting nationwide preliminary injunction enjoining enforcement of regulation prohibiting discrimination on the basis of gender identity and termination of pregnancy); *Texas v. U.S.*, 201 F. Supp. 3d 810, 836 (N.D. Tex. 2016) (granting nationwide preliminary injunction enjoining federal government from enforcing guidelines that students be permitted to use bathrooms aligned with their gender identity rather than biological sex); *Texas v. U.S.*, 86 F. Supp. 3d 591, 677 (S.D. Tex. 2015) (granting nationwide preliminary injunction enjoining implementation of the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program and expansion of DACA program); *Washington v. Trump*, 2017 WL 462040, at *3 (W.D. Wash. 2017) (issuing nationwide temporary restraining order prohibiting enforcement of January 27, 2017 Executive Order entitled "Protecting the Nation from Foreign National Terrorist Entry into the United States"). The possibility of a nationwide injunction was certainly foreseeable.

[2] To the extent that Plaintiffs challenge the particular merits of the Washington Court's injunction, such a challenge is not apposite or appropriate here. The proper forum for those challenges is the Ninth Circuit Court of Appeals.

Plaintiffs' remaining arguments are similarly unpersuasive. Plaintiffs argue that this case should be reopened because the parties made an "honest mistake" in assuming that the settlement agreement "would resolve the dispute without the need for a judgment codifying its obligations." (Mot., Dkt. 117, at 12). Plaintiffs' cited authority for the "honest mistake" rule involves a stipulation in which one party's counsel was not apprised of facts important to the decision to enter into the stipulation. *Russell-Miller Mill. Co. v. Todd*, 198 F.2d 166, 169 (5th Cir. 1952). That is not the case here. The terms of the settlement agreement reflect that Plaintiffs were well aware of the regulatory landscape in which the parties were litigating, and Plaintiffs have not offered any evidence suggesting they were laboring under the kind of information asymmetry at issue in *Todd*. Thus, applicable here is the well-established principle that Rule 60(b) "was not intended to relieve [a party] of the consequences of decisions deliberately made, although subsequent events reveal that such decisions were unwise." *National City Golf Finance v. Scott*, 899 F.3d 412, 418 (5th Cir. 2018) (quoting *Fed.'s Inc. v. Edmonton Inv. Co.*, 555 F.2d 577, 583 (6th Cir. 1977)); *see also Pettle v. Bickham*, 410 F.3d 189, 193 (5th Cir. 2005) ("Where a party makes a considerable choice . . . he cannot be relieved of such a choice because hindsight seems to indicate to him that, as it turns out his decision was probably wrong.") (quoting *Paul Revere Variable Annuity Ins. Co. v. Zang*, 248 F.3d 1, 6 (1st Cir. 2001)). Plaintiffs' "honest mistake" argument is unavailing.

Next, Plaintiffs contend that the Court's dismissal should be vacated due to the dismissal's dispositive nature. (Mot., Dkt. 117, at 13). But Plaintiffs' cited authority, *Central Distributors, Inc., v. M. E. T. Inc.*, does not stand for Plaintiffs' proposition; it stands for the proposition that a pre-trial stipulation should be withdrawn when necessary to permit the consideration of "critical and decisive" evidence at trial—a situation not applicable here. 403 F.2d 943, 946 (5th Cir. 1968). Contrary to Plaintiffs' assertion, courts regularly deny Rule 60(b) motions regardless of the

dispositive nature of a stipulation. *See Nat'l City Golf Fin.*, 899 F.3d at 414, 420. This argument is therefore also unavailing.

Similarly, Plaintiffs argue that withdrawal of the stipulation is supported "by the substantial public importance of this case's constitutional questions." (Mot., Dkt. 117, at 14). But again, courts regularly deny relief from judgment in cases raising constitutional questions. *See Ware v. Texas Workforce Comm'n*, 2009 WL 10703173, at *1–2 (N.D. Tex. Mar. 31, 2009); *Plummer v. Plunkett*, 2007 WL 412192, at *1 (S.D. Tex. Jan. 31, 2007). Moreover, Plaintiffs cite no authority for the proposition that the constitutional dimensions of a case support relief under Rule 59(e) or Rule 60(b).

Plaintiffs' remaining arguments are that withdrawal of the stipulation is warranted because Defendants are federal government entities and officials; that no prejudice will result from withdrawing the stipulation; and that it is equitable to withdraw the stipulation. (Mot., Dkt. 117, at 13–14). The Court does not find that these factors entitle Plaintiffs to the "extraordinary remedy" of reconsideration of a judgment. *Templet,* 367 F.3d at 479.

III. CONCLUSION

Plaintiffs have not demonstrated that "manifest injustice" will result by allowing the Court's order of dismissal to stand. Accordingly, for the reasons stated above, Plaintiffs' Motion to Amend Judgment is **DENIED**.

SIGNED on October 22, 2018.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE